

THE
CASE and CLAIM
OF THE
AMERICAN LOYALISTS
IMPARTIALLY STATED AND CONSIDERED.

Printed by Order of their AGENTS.

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INTRODUCTION.

THE Affairs of the American Loyalists have been long enveloped in doubt and uncertainty. Deprived of their fortunes, in consequence of their fidelity to the State, and destitute of that justice which is due to them from Society, they knew not where to look for it. Although their right to an indemnification for the losses they had sustained, and the sacrifices they had made to the Public safety, in obedience to the commands of their Sovereign, was clear and indisputable; yet, during the war, it was impossible

to foresee, whether they were to obtain it upon a final suppression of the rebellion, or in a pacification between the State and the revolters; or, whether they should be obliged to appeal to the laws of their Country, and to the justice of the Nation, for a compensation. During this uncertainty, they have patiently waited for events; and many of them have subsisted, by the aid of the strictest oeconomy with the utmost difficulty, on the temporary provision which Government has been pleased to make them.

But as those doubts are now removed by a treaty with *The United States* of America, in which *no indemnification whatever is secured*, they are obliged to seek for relief where the laws of the Society, and the principles of natural justice, direct, and where now it is only to be found. They say *obliged*, because, most certain it is, that, besides a reluctance to become in the least burdensome to their fellow-subjects in Great Britain, they would have preferred a restoration to their rights and fortunes, in the country where their natural, as well as social, connexions were formed, to any other compensation whatever.

Thus they find themselves under the necessity of stating their Case, and of submitting their Claim, to the consideration of those, in whom the constitution of the Society has placed the power of redress.

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AMERICAN LOYALISTS.

PREVIOUS to the year 1774, a rebellion of a singular and most dangerous nature had been growing to maturity in North America. Its aim was nothing less than the annihilation of the sovereign rights of Parliament, and the establishment of new independent sovereignties in their stead. In that year it broke out with a superior degree of violence. A part of the people only were concerned in it: a great part adhering to their allegiance, and confiding in the protection due to them from the State, refused to have any connection with it; and many, both by their declarations and actions, opposed it: but, being neither protected nor assisted in their opposition, and having no legal authority to subdue

the rising sedition *by force*, they had it not in their power to resist it *with effect*. Mobs were raised; lawless committees and conventions were formed; the rights of legislation, of judicial enquiry, sentence, and execution, were assumed: the authority of the Crown, to which the faithful citizen could only look for protection, was destroyed; and many were tarred, feathered, and otherwise *cruelly treated*. Such was the prevalence of the power, and the violence of the insurgents, that, in a little time, the well-affected were disarmed; the King's forts dismantled; the governors, and all the officers of Government, who had continued faithful to their trusts, and all others who had given an open opposition to their measures, were either *imprisoned*, or compelled to seek an asylum in *exile* from their families.

EARLY in the year 1775, his Majesty was pleased to communicate this lawless and seditious state of the colonies to both Houses of Parliament. After full deliberation, the Lords and Commons *concurred* in assuring his Majesty, "That
 " it was their *first* resolution, at the hazard of their
 " *lives* and *properties*, to stand by his Majesty
 " against all rebellious attempts, in maintenance
 " of his just rights, and of the *two Houses of Par-*
 " *liament.*" And the aids were accordingly granted for *that purpose*.

In pursuance of these spirited measures of the Parliament, his Majesty, on the 23d of August, in the same year, published a Proclamation at St. James's, in which, after reciting that "an open and avowed *rebellion*" existed in America as the reason of the Proclamation, he adds, "To the end, therefore, that none of our subjects may *neglect* or *violate* their duty through ignorance thereof, or through any *doubt* of the protection which the *law* will afford to their loyalty and zeal, we have thought fit, by the advice of our Privy Council, to issue this Proclamation, hereby declaring, that not only all our officers civil and military, are *obliged* to exert their *utmost endeavours* to suppress the rebellion; but that *all the subjects* of our realm, and the *dominions* thereunto belonging, are *bound by law*, to be *aiding and assisting* in the *suppression of the rebellion*, and to disclose and make known all traiterous conspiracies and attempts against our Crown and dignity. And we do accordingly *strictly charge and command* all our officers, civil and military, and *all other* our *obedient and loyal* subjects, to use their *utmost endeavours* to withstand and suppress such *rebellion*," &c.

THIS Proclamation was transmitted by his Majesty's Secretary of State to the several Governors

of the Colonies, with an order to publish it; and it was accordingly published.

AUTHORISED by these proceedings of the Crown, and both Houses of Parliament, General Gage, the Commander in Chief of the British forces in America, in order to dissuade the seditious from their lawless design, and to remind and call upon the loyal and faithful inhabitants to discharge their duties as subjects, in compliance with the Royal command, issued his Proclamation in the same year. In this Proclamation he offers a pardon "to all those who should lay down their arms, and return to their *duties as subjects*; and at the same time declares, that ALL OTHERS *who should protect, assist, supply, conceal, or correspond with the insurgents*, should be treated as REBELS and TRAITORS."

NOTWITHSTANDING these Proclamations; these positive and solemn Calls by the highest authority of the State, *strictly commanding* the well-affected part of the people to use their "*utmost endeavours to withstand and suppress the rebellion*;" the military force then in America was not competent to take the field, or oppose the torrent of the rebels, nor to give the aid and protection due to those who should attempt to withstand it: or, if it was competent, no effectual exertions were made

to that end. *Protection and allegiance are reciprocal duties between the State and the subject; but a subject is not bound to endanger his LIFE and his PROPERTY, before the State is in readiness to assist and support him.* The obligation of protection is therefore the *primary duty*: but yet no force deemed sufficient to "*withstand*" the revolters arrived, until twelve months after these Proclamations. On the other hand, the power of the insurgents so rapidly increased, as to embolden them to set up a number of independent sovereignties, claiming and exercising the *powers of life and death* over all within their jurisdictions, who should oppose their measures.

THOSE who are possessed of the least candour will perceive, and humanity will be shocked at, the *critical* and *dangerous* predicament into which these reverse transactions of the contending parties involved the loyal and faithful subjects of the Crown. On the one hand, though destitute of that *protection and support* which they had a right to expect from the State, they were called upon "*to withstand and suppress the rebellion*;" and if they even "*corresponded*" with the Insurgents, who were a continual guard over their actions and expressions, they were declared "*rebels and traitors*" to Government; and, on the other hand, they were subject to the *sanguinary laws, attainders, and prescriptions* of those who held, *de facto*,
the

the sovereign powers of the country ; and who had, *in their turn*, passed laws, declaring it *High Treason* against their usurpation, to *aid, assist*, or even to *correspond* with the subjects of Great Britain.

THAT a great number of Loyalists have been ever ready, under proper support, to assist in suppressing the rebellion at the risk of their lives and fortunes, and have suffered great oppressions and miseries on account of their attachment to Great Britain, are facts well known to thousands. For the present, they appeal for the truth of this assertion to the numerous insurrections in favour of the British Government, by great bodies of Loyalists in the Carolinas, Virginia, Maryland, the Delaware Counties, and New Jersey ; to the numerous offers of their assistance to the British generals ; and, in particular, to the Memorial made to his Majesty, through his Secretary of State, offering, by their *own force*, to reduce three Provinces to the peace of the Crown, provided they were supplied with arms and ammunition, and the army under Washington should be kept from molesting them. And they further appeal to the official letters of Generals Howe, Clinton and Cornwallis, and likewise to a Proclamation published by General Burgoyne in the year 1777, in the following words : “ To the
“ eyes and ears of the temperate part of the Pub-
“ lic,

" lic, to the breasts of *suffering* THOUSANDS in the
 " provinces; be the melancholy appeal,—Whe-
 " ther the present unnatural rebellion has not
 " been made a foundation of the *completest System*
 " of Tyranny that ever God, in his displeasure,
 " suffered for a time to be exercised over a fro-
 " ward and stubborn generation? Arbitrary im-
 " prisonment, confiscation of property, persecution and
 " torture, unprecedented in the inquisition of the
 " Romish church, are among the palpable enor-
 " mities that verify the *affirmative*. These are
 " inflicted by Assemblies and Committees, who
 " dare to style themselves Friends to Liberty,
 " upon the *most faithful subjects*, without distinc-
 " tion of age or sex, for the *sole* crime, often for
 " the *sole suspicion*, of having adhered in principle
 " to the Government under which they were
 " born, and to which, by *every tie human and*
 " *divine*, they owe allegiance. To consummate
 " these shocking proceedings, the *profanation of*
 " *religion* is added to the most profligate prosti-
 " tution of common sense. The consciences of
 " men are set at nought, and MULTITUDES are
 " COMPELLED, *not only to bear arms against their*
 " *Sovereign*, but also to swear allegiance to an
 " usurpation *they abhor* *."

IN

* Even Paine, the noted party writer for Congress, has, in a pam-
 phlet just published by Stockdale, given a testimony as to the numbers
 and sufferings of the American Loyalists. His words are: " The
 " British have lost their interest in America with the disaffected. [i. e.
 " the Loyalists.] There is no new scene left for delusion; and the

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IN this calamitous and forlorn situation, so justly described by a General upon the spot, a great number of the people, though they remained under the rebel usurpation, continued unmoved in their duty to the British Government: many of these, being particularly circumstanced in respect to their local situations and connexions; many having religious scruples, in regard to the lawfulness of war; and many, very many, from a rational and justifiable prudence, waiting for the promised *support and protection*. But there were many others of a more firm and determined spirit, who, relying on the protection due to them from the Society, and solemnly renewed by the assurances of MAJESTY itself, obeyed, with cheerfulness and firmness, the positive injunctions of their Sovereign. These men did not hesitate, at the first opportunity, to desert their nearest and dearest connexions, to abandon their estates, to risk their ALL in the service of their country, to come over to the British generals, and to tender their assistance in suppressing a rebellion which threatened its ruin.

IN his Majesty's Proclamation before-mentioned, the reciprocal obligations between the State and the Subject had been justly and clearly de-

" THOUSANDS who have been ruined by adhering to them, and have
 " now to quit the Settlements they had acquired, and be conveyed
 " like transports [*convicts*] to cultivate the deserts of *Augustine* and
 " *Newa Scotia*, has put an end to all farther expectations of aid."

fined. The People had been called upon to discharge the *duties* of Subjects, “ *in withstanding and suppressing the rebellion,*” and they had been assured, that “ the law would afford protection to their loyalty and zeal.” But Lord Viscount Howe, one of his Majesty’s Commissioners acting under the authority of Parliament, published a Proclamation in the year 1776, and, as a further and especial encouragement to the Loyalists, expressly assured them, that “ *due consideration*” should be had to the *meritorious services* of all “ persons who should *aid or assist* in restoring the “ public tranquillity; and that every *suitable encouragement* should be given for promoting such “ measures as shall be conducive to the establishment of legal government and peace, in pursuance of his Majesty’s most gracious intentions.”

IN the same year two other Proclamations were published by Lord and General Howe, and a Declaration in the year following, by the latter calling on the People to discharge their DUTIES as SUBJECTS.

IN the year 1778, the Earl of Carlisle, William Eden and George Johnstone, Esqrs. were appointed by his Majesty, under the authority of an Act of Parliament, as Commissioners to treat

with the revolvers. These Commissioners, after they had been at Philadelphia and New York, and made full inquiry into the state and temper of the Colonies, gave ample testimony of the numbers and sufferings of the Loyalists, and of the obligation of the State to give them support and protection. This Testimony is to be seen in their letter to Henry Laurens, Esq; the President, and other Members of the Congress: "Although, say they, we have no doubt of his Majesty's disposition to remove every subject of uneasiness from the Colonies, yet there are circumstances of precaution against our ancient enemies, which, joined to the regard that must be paid to the safety of MANY, who, *from affection* to Great Britain, have exposed themselves to *suffer* in this contest, and *to whom* Great Britain OWES SUPPORT *at* EVERY EXPENCE *of blood and treasure.*"

In the same year, after the evacuation of Philadelphia, the Congress, for certain political Reasons, did, by their resolve, recommend to the Rebel States to repeal the sanguinary laws made against the Loyalists, and to restore them to their properties. The Loyalists also, conceiving that they were about to be deserted by the British arms, and hoping, through the interest of their friends, that they might obtain the restitution recommended by the Congress, memorialized

zed the Commissioners on the propriety of their pursuing the measures necessary to that end. But the Commissioners answered, " That they " could not countenance any measure, tending " to a *reconciliation* with his Majesty's *rebellious* " *Subjects*, upon terms inconsistent with those " already proposed to the American Congress; " nor give sanction to *any act*, by which the " subject of the State may be led to *re-* " *nounce his allegiance* to his Majesty, or to join " with his enemies." Thus the Loyalists, when they had a prospect of their recovering the losses and sacrifices they had made in the cause of Great Britain, were forbid to take any measures for that purpose; and were left destitute of all hope of *restitution*, but in a suppression of the rebellion, or of *compensation*, but in the laws and justice of the Nation.

WHILE the same Commissioners were thus acting in pursuance of their duty to the Crown, they were further careful in urging the Loyalists to a steady perseverance in their allegiance. They issued their Manifesto and Proclamation, directed to " The Congress, the several Assemblies, " and all other the free Inhabitants of the Colonies " of every rank and denomination." In this Manifesto they declare to the Congress, " That they " are responsible to their countrymen, to the " world, and to God, for the continuance of the " war,

" war, and for all the miseries with which it must
 " be attended."

AFTER calling upon the general assemblies, and conventions of the Colonies, to consider their offers of peace, they add, " It has not been, nor is it
 " our wish to seek the objects which we are com-
 " missioned to pursue, by fomenting popular di-
 " visions and cabals; but it is both our wish and
 " our *duty* to *encourage and support* any men, or
 " bodies of men, in their return of loyalty to
 " our sovereign, and of affection to our fellow-
 " subjects." They further add, " If, however,
 " there are any who think, notwithstanding these
 " reasonings, the *independence of the Colonies* will,
 " in the result, be *acknowledged* by Great Britain;
 " to them we answer, without reserve, that we nei-
 " ther possess nor expect powers for that purpose:
 " and if Great Britain could ever have sunk so
 " low as to adopt such a measure, we should not
 " have thought ourselves compellable to be the
 " *instruments* in making a *concession* which would,
 " in our opinion, be calamitous to the Colonies
 " to whom it is made, and *disgraceful*, as well as
 " *calamitous*, to the country from which it is re-
 " quired."

HAVING urged these, with a variety of other arguments, to dissuade and deter the seditious from their lawless revolt, and to encourage the Loyalists in a perfect reliance on the faith and protection

protection of the British Government, they call on the people of America " to vie with each other " *in eager and cordial endeavours to secure their* " own peace, and to promote and establish the " prosperity of their country, and the *general* " *weal of the empire.*" And they further, in an express and particular manner, apply to, and command, " all officers civil and military, and " *all other his Majesty's loving subjects whatever,* " to be aiding and assisting unto them in the execution of their Manifesto and Proclamation, " and all matters therein contained."

Thus encouraged by the resolutions and acts of the British Parliament, thus continually called upon by his Majesty, his Commissioners and Generals acting in his name, and under the authority of Parliament, and firmly relying upon the established rights of citizens, and the Royal and national faith so repeatedly pledged for their protection and indemnification, the Loyalists, who now claim the justice due to them as subjects, did not hesitate respecting the part they were bound to take. The protection and justice *due* to them from the State, and the duty they *owed* in return, were always before them. Imprest with a perfect confidence in the first, they resolved not to be deficient in the last. Neither the allurements of the highest promotions and honours, nor the most beneficial emoluments of office, often

often proffered to them, nor the threats and intimidations of the most cruel and despotic authority, incessantly held out to them, nor the terrors of sanguinary laws, and consequent executions, could move their attachment and allegiance to the sovereignty of this country; and therefore, in obedience to the calls of their Sovereign, they took a decided part in the cause of the fellow-subjects in Great Britain.

IN direct consequence of this virtuous and meritorious conduct, their persons have been attainted, their estates confiscated, sold, and appropriated to the use of the rebel usurpation; and many of them, possessed of affluence and a degree of happiness, surpassed by that of no people in any country upon earth, have *devoted* the whole of their fortunes and their felicity to a religious observance of the conditions and duties of society, and to the *national safety*.

THE
CLAIM
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IN the preceding state of facts, we have candidly represented the Case of the American Loyalists. It now remains, that we consider the Claim which they have upon their fellow-citizens, by the established laws of all societies, and, in particular, by those of Great Britain. This we will endeavour to do, with the strictest regard to truth and justice.

THE great aim and end of civil society is protection of the persons and properties of individuals, by an *equal contribution* to *whatever* is necessary to attain and secure it. For, since *all* the individuals who compose the union are to partake of its protection, and of every other benefit resulting from it, nothing can be more just, than that the *expences, burthens, and sacrifices*, necessary to preserve it, should be equally distributed and proportionably sustained by *all*.

No man in his senses would enter into a society where a contrary law or principle was established. Should there be found one among the various forms of Government, in which an individual might be *compelled* to risque his person in its defence, *without being paid for it*, or to incur a loss of his estate *without a compensation*, or even to bear an *unequal burthen* of the expences and sacrifices necessary to be made for the *public safety*, where would be its public justice? Men would justly prefer a state of nature, with all its incidental mischiefs, to such a society: for they would readily perceive, that that protection and equal justice, for which they had surrendered up their natural liberty, was not to be found in it. Indeed, this principle of *equal justice* and *individual security* is stamped in the *nature*, and is of the *essence*, of all civil societies, and pervades all their laws, whether fundamental or municipal.

In the civil institutes of every society, we find it an established rule, that all sacrifices made by individuals, for the benefit or accommodation of others, shall be equally sustained by all those who partake of it.

If two or more men ship merchandize in the same bottom, and the property of one of them is thrown into the sea to save the ship and the rest of the cargo, the loss shall be averaged, and equally sustained by *all the owners*.

If a house is pulled down, or a piece of ground taken from an individual, for the public benefit or convenience, the value shall be paid to the owner by a contribution or, tax laid upon all to whose convenience it is appropriated.

SUCH being the law in regard to the property of individuals when seized on for the use of a particular district, or number of persons, it would be strange indeed if it were otherwise, in regard to property, seized on, or sacrificed by individuals to the *common safety* or advantage of the *whole society*. The absurdity is too gross, and the injustice too manifest, ever to have been a part of any political system. In both cases the individual is equally entitled to a compensation, and it must be allowed, that in the latter the society at large is the most able to make it; and reason, and the principles of natural justice, equally demand it in both.

THERE is no fundamental law of civil society more clearly established, or better understood, than that of *transcendental propriety*, or *eminent domain*. By this law, the supreme power of every State is authorised to take and dispose of the wealth and property of individuals, when it becomes *necessary* to the *public safety*. But the same law enjoins that power to make *full compensation* for the property taken or given up, to the owners of

it, and obliges the society to furnish the means of doing it. It is a maxim founded in this law, as well as one of natural justice, *Qui sentit commodum sentire debet et onus*—those who share the benefits resulting from any particular thing ought to share the burthens necessary to obtain and secure it: and therefore, as all the individuals are interested in the *public welfare*, it has been the universal practice of nations to compensate their private subjects out of the *public purse*, for the sacrifices made on the command of the Sovereign to the *public safety*.

PUFFENDORF, in explaining the *force* and *extent* of this law, tells us, “It will be confessed, agree-
 “able to natural equity, that when *contributions*
 “are to be made for the preservation of some par-
 “ticular thing, every man should pay *his quota*;
 “and *one* should not be *forced* to bear more of the
 “burthen than *another*. And the same holds to be
 “equity also in *Commonwealths*. But because the
 “*State* of a Commonwealth may be *such*, that
 “either some *pressing necessity* will not give leave
 “that every particular subject’s *quota* should be
 “collected, or else, that the public may be found
 “to want the use of *something* in the possession of
 “some private subject, it must be allowed, that
 “the sovereign power may *seize upon it*, to answer
 “the *necessities* of the State: but then all above
 “the proportion that was due from the proprietors
 “is

"is to be refunded to them by the rest of the subjects."*

To illustrate the principles here laid down, the same author mentions the following examples :

A SOVEREIGN may prostrate the houses or fences, or lay open the fields or gardens of *private* men, to make room for ramparts or ditches, if it be necessary to the fortification of a town.

IN sieges, houses or trees may be prostrated or cut down, to deprive the enemy of shelter.

IF private men lay by materials for their own use, such materials may be seized and made use of in fortifications,

IF, in a general scarcity, the store-houses and granaries of private men are shut up, they may be opened to supply the necessities of the people.

THE private coffers of individuals, who see the State in extremity, and will not lend their money to relieve it, may be seized on and rifled. Cyrus did so, *engaging to make restitution*, and it was held lawful and justifiable : but the conduct of the indebted and bankrupt Cæsar, in compelling the Romans to lend him money, and resolving *never to pay it*, has been ever condemned as *unlawful* ;

* Puffendorf, b. viii. c. v. s. 2.

not because he compelled them to make the loan, but because he resolved *not to repay it*.

If there is no other means of saving a society but that of destroying a part or district of it, the sovereign may lay it waste, and remove whatever may be serviceable to the enemy out of it.

ALL these acts, with many others, are justifiable under the fundamental law of *eminent domain*, common to all civil societies, and not inconsistent with the compact of union which men enter into when they oblige themselves to perform the duties of citizens: for the public safety is the supreme law of every State; and the rights, privileges, and properties of private men, must yield to the necessities of the Commonwealth. But, "however (says Puffendorf, when treating on the cases we have mentioned under this law), *without dispute*, they that have *lost or sacrificed their fortunes* to the *public safety* in such extremities, ought to have a *restitution or satisfaction* made them, *as far as it is possible by the Commonwealth* *."

THE same author, and indeed every other on the subject, further expressly agree, that under this law of *eminent domain*, if a prince is compelled, *by necessity*, to alienate in a treaty a part of his dominions, the losses of individuals, whose

* Puffendorf, b. viii. c. v. §. 7.

fortunes

fortunes are sacrificed to the *national safety*, must be *made good* by the nation; and therefore we find that, to avoid or lessen the weight of such losses, it has ever been usual, where it could possibly be done, to stipulate in the treaty, that the individuals shall be *restored* to their property, or, if not taken from them, shall *retain* it, with liberty to *dispose* of it to the *best advantage*, and to return with the proceeds of it to the society of which they are members. The reason of this is, because a society cannot *cast off*, or *finally abandon*, one of its citizens, who has faithfully performed the conditions of society, *without his consent*, while he claims the rights and benefits due to him as such, and is capable of enjoying them.

“ What power (says Puffendorf) the Common-
 “ wealth hath to *excuse* or cede the goods of pri-
 “ vate subjects *upon a pacification*, must be dis-
 “ covered from the nature of *transcendental pro-*
 “ *priety*; upon the *force of which* the goods and for-
 “ *tunes of private men* may be given up whenever
 “ the *necessities* of the State and *public interest* re-
 “ quire it: but with this consideration, that the
 “ State is *obliged to make good* such losses to the
 “ *subject* out of the *public revenue*, either *imme-*
 “ *diately*, or at least as soon as *possible*. But whe-
 “ ther a particular subject's goods may be ex-
 “ cused or taken from him, must, in a monarchy,
 “ (*i. e.* an absolute monarchy) be determined
 “ by the prince; and the *whole body* of the
 “ subjects,

“ subjects, upon his *command*, is *obliged* to make
 “ *satisfaction* to the persons that have sustained
 “ loss upon the *public account* beyond his own
 “ proportion *.”

BURLAMAQUI, when treating upon the same
 subject, says, “ That it is *really* a maxim of na-
 “ tural equity, that when contributions are to be
 “ made for the *necessities of the State*, every man
 “ ought to pay *his quota*, and should not be *forced*
 “ to bear more of the burthen than another.”

“ And since it may happen, that the pressing
 “ wants of the State may oblige the Sovereign to
 “ seize on something in the possession of some
 “ private subject, it is just, in these cases, that
 “ the proprietors should be *indemnified* either by
 “ their *fellow subjects*, or by the *Exchequer*, for
 “ what exceeds his proper share, *at least as near*
 “ *as possible* †.”

THE same author, when treating of the right
 of the sovereign to alienate by *treaty* the domi-
 nions of the State, further adds, That “ as for
 “ the effects of a *private subject* ceded with the
 “ territory, the Sovereign, as such, has a tran-
 “ scendental or supereminent right to dispose of
 “ the goods and fortunes of private men; con-

* Puffendorf, b. viii. c. viii. s. 3.

† Burlamaqui, Pol. Law, part iii. c. 3. s. 27, 28.

“ frequently

“ frequently he may give them up as often as the
 “ public *advantage* or *necessity* requires it: but
 “ with this consideration, *that the State ought to*
 “ *indemnify the subject for the loss he has sustained be-*
 “ *yond his own proportion* *.”

Monsieur de Vattel, in his Treatise on the Law of Nations, and indeed every other autho. on the subject, gives the same explanation of the law of *eminent Domain*, and establishes the doctrine of compensation here laid down. “ The right (says he) which belongs to the *society* or the *sovereign*, of disposing, in case of necessity, and for the public safety of *all the wealth* contained in the State, is called the *eminent Domain*. It is evident, that this right is, in certain cases, necessary to him who governs, and consequently is a part of the *sovereign power*. When, therefore, it disposes, in a case of necessity of *the possessions of a community*, or an *individual*, the alienation will be *valid*. But JUSTICE DEMANDS, that this *community*, or this *individual*, be *recompensed* out of the *public money*; and, if the *treasury* is not able to pay it, *all the citizens are obliged to contribute to it: for the expences of a State ought to be supported equally, and in a just proportion*. It is in this, as in the throwing merchandise over-board to save the vessel †.”

* Burlamaqui, part iv. c. xiii. f. 6.

† Vattel on the Law of Nations, b. i. c. x. f. 242.

MANY precedents, both ancient and modern, founded on the law of *eminent Domain*, might be adduced from the uniform practice of States to illustrate this truth :

IN the civil war which happened in Spain in the fifteenth century, and which ended in the independence of the States of Holland, the principle of national justice here contended for was strictly fulfilled. The war had continued near half a century. The attainders and proscriptions were numerous in proportion to the duration of the war; and yet when the belligerent powers met to treat of peace, conscious of the justice, as well as sound policy, of indemnifying those who had suffered more than their own proportion, by losses during the war, among a variety of other equitable articles, it was finally stipulated, That all real estates which had been "seized, exposed to sale, or proscribed, on account of the war," should be restored to the former owners; and that for all goods seized and sold by the public officers, the owners should have the goods returned, or receive six pounds and a quarter yearly for every hundred pounds.

IN the Treaty of Utrecht, care was taken to restore the Honors and Domain of *Chattelbervault* to the family of *Hamilton*; and the Honors and Domains of *Aubigny* to the family of *Richmond*.

At the termination of the last war, when France ceded the province of Canada to Great Britain, she was so tenacious of the safety and protection of her Subjects, that she insisted on, and it was accordingly agreed, that the Canadians should retain their property, and that such as did not chuse to become the subjects of Great Britain, but wished to return to their former allegiance, should have a right to dispose of their property to the best advantage, and to transport its produce unmolested to their own Society. At the same time, the like stipulation was made in the cession of New Orleans to Spain.

WHERE the nature and issue of the war have not admitted of these kinds of indemnification, it has ever been the uniform practice of nations to make a compensation out of the *public treasury*. In these acts of public justice, so consistent with the nature and safety of Society, and so necessary to the encouragement and support of its members, in their fidelity to the State, the American Sufferers contemplate with pleasure, that Great Britain has been surpassed by none. Of this truth, a perusal of her history will afford abundant demonstration.

IN the year 1689, by the 1 W. & M. c. 9. all the Protestants who had *continued faithful in their allegiance* to the British Government, during

the rebellion in Ireland, and had incurred a forfeiture of their estates under the acts of the rebel Parliament, were "*restored* to their possessions, " as well ecclesiastical as temporal, in the same " manner they were held before the rebellion."

In the year 1709, during the wars of Queen Anne, the French had invaded Nevis and St. Christophers, and committed great depredations on the inhabitants. By a statute passed in that year, the Parliament granted 103,003*l.* 11*s.* 4*d.* as a compensation to the Sufferers for the losses sustained by those depredations.

In the year 1715, by the 1 Geo. c. 44. After reciting " the loyalty and zeal which the city of " Glasgow had shewn," in expending a sum of money in putting " themselves in a posture of defence against the rebels and traitors," the Parliament, in consideration of their losses and expences, granted to the City a duty upon ale and beer for the space of twenty-three years, as a *compensation*,

In the year 1717, by the 4 Geo. 1. c. 8, " All " *persons* who had continued *dutiful and faithful* " *to her Majesty*, and whose houses or goods had " been burnt *by the rebels* in Scotland, or burnt " or otherwise destroyed at Preston in Lancashire " by the rebels, or his Majesty's army, shall be " fully reimbursed and repaid their losses by the " *respective*

“ respective Exchequers of England and Scotland.”

IN the year 1725, Daniel Campbell, Esq; had been concerned in promoting an Act for laying a duty upon Malt. A mob rose at Glasgow, and destroyed his property : And the Parliament, by the 12th of Geo. 1. c. 27. extended the national justice even to his case, and ordered his losses to be repaid out of the produce of certain duties, “ clear of all deductions.” For, says the Statute, “ the great losses and damages sustained, “ being on account of the concern he had, or “ was supposed to have had, in promoting the “ Act for laying a duty upon Malt; it is *just* “ and *reasonable* that the said damages and losses “ should be *made good* and *repaid* to the said Daniel Campbell.”

IN the year 1747, a Petition by Dr. Swinton, for a compensation for sundry houses destroyed at Chester, in consequence of the preceding rebellion, the honour and justice of the Nation was so much concerned in a compliance with it, that it came down recommended by the King ; and was received by the House, though the time limited for private petitions was expired. It was afterwards committed to a Committee of the whole House ; and, by the same Act which granted the public aids, a sum of money was given as a compensation,

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IN the year , when the State found it necessary to cede to France the Island of St. Lucia, ample compensation both of honours and revenue was made to the Duke of Montague, the proprietor. The Order of the Bath was renewed. He was created Chancellor, and enjoyed the extensive emoluments of that office.

IN the year 1764, several tumults and insurrections, in opposition to the authority of Parliament, took place in America. The houses and other valuable property of divers persons, who had discharged their duty in attempting to carry the Act of Parliament for laying a Duty on Stamps into execution, were destroyed. His Majesty laid these lawless proceedings before the two Houses of Parliament. Upon due consideration, *and in strict conformity to the Law of Indemnification, for what a Subject has lost in discharging his duty to the State, both Houses*

RESOLVED, " That an humble Address be presented to his Majesty, to desire, that he would
 " be graciously pleased to give instructions to the
 " Governors of the several provinces where those
 " tumults and insurrections have happened, That
 " they should, in his Majesty's Name, *require the*
 " *Assemblies of the said Provinces to make a pro-*
 " *per recompence to those who have suffered in their*
 " *Persons*

" *Persons or Properties, in consequence of the said Tumults and Insurrections*; and to assure his Majesty that they will, upon this *and all Occasions*, support the lawful authority of the Crown and of the rights of Parliament."

And they further

RESOLVED, " That all his Majesty's Subjects, residing in the said Colonies, who have manifested their desire to *comply with, or to assist in, carrying into execution the Act for laying a Duty on Stamps, or any other Act of Parliament in the British Colonies in North America*, have acted as *dutiful and loyal Subjects*, and are therefore *entitled to, and will assuredly have, the favour and protection of this House.*"

IN the year 1767, the House of Commons took into their consideration the state of North America; and after full deliberation, came, among others, to the following Resolves, viz.

RESOLVED, " That tumults and insurrections of the most dangerous nature have been raised and carried on in the North American Colonies, in *open defiance* of the powers and dignity of his Majesty's Government, and in *manifest violation of the legislative authority of this kingdom.*"

RESOLVED,

RESOLVED, " That such persons, who, on account of the desire which they have manifested, to *comply with*, or to *assist* in carrying into execution, any acts of the legislature of Great Britain, relating to the British Colonies in North America, have suffered any injury or damage, *ought to have FULL and AMPLE compensation* made to them for the same by the respective Colonies in which such injuries or damages were sustained."

RESOLVED, " That *all* his Majesty's subjects residing in the said Colonies, who have manifested their desire to *comply with*, or to *assist* in, carrying into execution any acts of the legislature relating to the said Colonies in North America, have acted as *dutiful and loyal subjects*, and are therefore *entitled to*, and will *assuredly have, the protection of the House of Commons of GREAT BRITAIN.*"

THE same House of Commons, impressed not only with a just sense of the national justice which the Loyalists contend for, but with the *policy and necessity* of holding out *distinguishing rewards*, and *marks* of the national favour and approbation to those who had accepted of, and should perform their *public trusts*,

RESOLVED, " That an humble address be presented to his Majesty, that he will be graciously
" pleased

"pleased to confer some marks of his *Royal favour*
 "on those *Governors and Officers* in the several
 "Colonies who distinguished themselves by their
 "zeal and *fidelity* in supporting the dignity of the
 "Crown, the just rights of Parliament, and the
 "supreme authority of Great Britain over the
 "Colonies, *during the late disturbances in Ame-*
 "rica."

MANY more precedents of compensation for sa-
 crifices made by the *private subject*, and of *distin-*
guishing marks of public favour to official, as well as
private men, might be adduced from the history
 of all nations, and in *particular* from that of the
 British; but the Loyalists think it unnecessary to
 recite them; because they conclude, that it is easy
 for Britons to conceive, that if this was not the
 law of Great Britain; if Great Britain is not
 bound to make compensation to individuals for
 the sacrifices made to the public interest and
 safety, then, while it possesses *private*, it wants
public justice. The property of the people
 would be at the *absolute* disposal of the Sove-
 reign. For the compensation enjoined by the
 law of *eminent Domain* is the only check upon
 the *abuse of it*. That justice and protection, to
 purchase which men give up their natural liberty,
 would be wanting in the British government.
 Instead of being adapted to the preservation and
 security of its subjects, it would be despotic;

may more, it would be a system of injustice and oppression. It would be a government founded in principles more unjust, dishonest, and oppressive, than any other upon earth: for this great and equitable law of restitution for property *devoted to the public safety*, is common to the most absolute monarchies.

AFTER so many authorities directly supporting the Case of the American Loyalists, little more need be said to prove the legality and justice of their claim upon the nation. They were, and yet are as perfectly subjects of the British State, as any man in London or Middlesex. They were as much bound by all the obligations and duties of the society, and consequently as much entitled to the protection and justice of the State; and therefore, the Crown can have no greater right to sacrifice their property to the public safety, than that of any other subject, without compensation. They have been called on by their Sovereign, when surrounded by tumult and rebellion, to defend the Supreme Rights of the Nation, and to assist in suppressing a rebellion, which aimed at their destruction. They have received, from the highest authority the most solemn assurances of *protection*, and even *reward*, for their "*meritorious services*." These Calls, and these Assurances, have been repeated again and again, during the times of the greatest

est danger, and even after many hundreds had fallen victims to the unrelenting cruelties of the Rebel States, on no other account but that of their allegiance to their Sovereign, and fidelity to their fellow-subjects in Great Britain. They have, notwithstanding those cruelties, at every hazard, and in the face of the most imminent danger, obeyed those calls, and generously stepped forth in defence of the Supreme Authority of the State. In direct consequence of which, their lives have been attainted, their estates confiscated and applied to the use of the Rebels. Thus called on, and having suffered such losses, and made such sacrifices to the Public Safety, they conceive that they have, *in an especial manner*, an incontestible right to national justice and public protection. And therefore they entertain a well-grounded confidence, that those losses and sacrifices will not be solely borne by themselves, but will, as they ought, by every principle of law and natural justice, be equally distributed and borne by the whole society. On them the burthen will be *light and insignificant*; but were it to rest on the suffering individuals, it would be *unjust in the utmost degree, intolerable, and unmerciful*.

THAT a nation, consisting of 9,000,000 of people, and possessed of more real and substantial wealth than any other in Europe, is able to do
this

this act of natural and legal justice, without adding in any considerable degree to its burdens, will not, cannot be controverted. For probably less than *one-fourth* part of the sum necessary to defray the public exigencies of a war during one year, will be abundantly sufficient for this equitable purpose: and they trust in the liberality and magnanimity of the nation, that the plan of public œconomy, so just and so necessary in every society, will not be a bar to the justice they have a right to claim as individual subjects; nor be extended farther, in regard to *them*, than common justice requires: for they conceive that the consideration of *public œconomy* can have no beginning until the demands of *public faith* and *national justice* are fulfilled; that however useful and necessary it may be, at all times, and upon all occasions, it can have no weight when opposed to *public justice*; and that, in the nature of things, it can only regard the *bounties* and *voluntary expences* of the State.

WHILE the American Loyalists thus contend for public justice, they cheerfully agree, that a nation is not obliged to carry on a long and unsuccessful war against numerous and powerful enemies. They will suppose, without presuming to judge, that the State is reduced to the unfortunate alternative of continuing the war at the expence of *twenty millions yearly*, or, of giving up the *estates of a number of its faithful and deserving*
subjects

subjects. Even in this case, they persuade themselves, that they are justifiable upon the principles of civil society, in contending, that the just objects of public œconomy can only dictate the prudence and justice of avoiding the *greater evil*, and by the savings of a *permanent peace*, to repair the losses and sacrifices it inflicts on individuals, *as the price of obtaining it.*

HIS Majesty and the two Houses of Parliament having thought it necessary, as the *price of peace*, or to the interest and safety of the Empire, or from some other motive of public convenience, to ratify the Independence of America, without securing *any restitution whatever* to the Loyalists; they conceive that the Nation is bound, as well by the fundamental laws of the Society, as by the invariable and eternal principles of natural justice, to make them a compensation.

SENSIBLE of the predicament in which they stand as subjects; and conscious that they have, on their part, by their exercises and sacrifices, more than fulfilled the conditions of Civil Society; they would be wanting to themselves, and to those tender connections who have, from necessity, been the unhappy companions of their misfortunes, if they did not make their claim of justice to those who are authorized to grant it.

And

And therefore they do appeal to the fundamental laws of the Society of which they are members,—to the justice of their Sovereign and his Parliament, and of their Fellow-subjects in Great Britain,—at whose *instance*, in support of whose *Sovereign Rights*, and for whose *sakes*, they have lost and sacrificed all that men can possibly lose or suffer, *life itself only excepted*. And they make this Appeal under the firmest confidence in the *Liberality and Equity* of the Nation, that the *Justice of their Claim* will be acknowledged, and a *Compensation* be accordingly made.

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